

(4) The suspending official shall make a decision on the basis of all information available including findings of facts, and/or arguments submitted by the contractor.

Subpart 809.5—Organizational Conflicts of Interest

809.504 Contracting officer's responsibilities.

(a) Contracting officers will be responsible for determining the existence of actual and/or potential organizational conflicts of interest which would result from the award of the contract. The contracting officer will be guided by information submitted by offerors and by his/her own judgment. The contracting officer may obtain the advice of legal counsel and the assistance of technical specialists in evaluating potential organizational conflicts.

(b) If it is determined that organizational conflicts of interest will be created by the award of the contract, the contracting officer may find an offeror nonresponsible.

(c) Notwithstanding the existence of organizational conflicts of interest, it may be determined that the award of the contract would be in the best interest of the Government. In that case, the contracting officer may set terms and conditions which will reduce the organizational conflicts of interest to the greatest extent possible, with the approval of the head of the contracting activity.

(d) The contracting officer will, in addition to any certifications required by this subpart, require in all solicitations for consulting services that the offeror submit as part of an offer a statement which discloses all relevant facts relating to existing or potential organizational conflicts of interest surrounding the contract and/or the proposed use of subcontractors during the contract.

809.505 General rules.

The determination that organizational conflicts of interest exist can only be made when facts surrounding individual contracting situations are known. Therefore, it is up to the contracting officer to exercise common sense, good judgment and sound discre-

tion in making such a determination and to take steps to mitigate to the greatest extent possible organizational conflicts of interest. The contracting officer will be guided by at least two underlying principles. These are that organizational conflicts of interest may result from (a) conflicting roles and interests of the contractor, in which case he/she would be unable to give unbiased and objective advice or may otherwise produce a biased work product; or (b) unfair competitive advantage which exceeds a normal flow of benefits from the award of the contract.

809.508-2 Contract clause.

The representation in 852.209-70, Organizational Conflicts of Interest, will be made a part of all solicitations for consulting services.

[49 FR 12594, Mar. 29, 1984, as amended at 50 FR 791, Jan. 7, 1985]

Subpart 809.7—Defense Production Pools and Research and Development Pools

809.702 Contracting with pools.

Department of Veterans Affairs contracting officers will be advised of, consider bids from, and make awards to, Small Business and Defense Production Pools. The Chief Medical Director, or designee, will notify the appropriate administrations and staff offices when such pools are approved.

[49 FR 12594, Mar. 29, 1984, as amended at 54 FR 40063, Sept. 29, 1989]

PART 811—DESCRIBING AGENCY NEEDS

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AUTHORITY: 38 U.S.C. 501 and 40 U.S.C. 486(c).

SOURCE: 63 FR 17335, Apr. 9, 1998, unless otherwise noted.

811.001 Definitions.

(a) *Brand name product* means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer or distributor.

(b) *Salient characteristics* are those particular characteristics that specifically describe the essential physical and functional features of the material or service required. They are those essential physical or functional features which are identified in the specifications as a mandatory requirement which a proposed “equal” product or material must possess in order for the bid to be considered responsive. Bidders must furnish all descriptive literature and bid samples required by the solicitation to establish such “equality”.

Subpart 811.1—Selecting and Developing Requirements Documents

811.104 Items particular to one manufacturer.

(a) Specifications shall be written in accordance with FAR 11.002 unless otherwise justified by the specification writer and approved by the contracting officer as described in paragraph (b) of

this section. The contract file shall be documented accordingly.

(b) When it is determined that a particular physical or functional characteristic of only one product will meet the minimum requirements of the Department of Veterans Affairs (see FAR 11.104) or that a “brand name or equal” purchase description will be used, the specification writer, whether agency personnel, architect-engineer, or consultant with which the Department of Veterans Affairs has contracted, shall separately identify the item(s) to the contracting officer and provide a full written justification of the reason the particular characteristic is essential to the Government’s requirements or why the “brand name or equal” purchase description is necessary. The contracting officer shall make the final determination whether restrictive specifications or “brand name or equal” purchase descriptions will be included in the solicitation.

(c) Purchase descriptions that contain references to one or more brand name products may be used only in accordance with 811.104-70, 811.104-71, and 811.104-72. In addition, purchase descriptions that contain references to one or more brand name products shall be followed by the words “or equal,” except when the acquisition is fully justified under FAR 6.3 and VAAR 806.3. Acceptable brand name products should be listed in the solicitation. Where a “brand name or equal” purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products are determined by the Government to fully meet the salient characteristics listed in the invitation. The contract file will be documented in accordance with paragraph (b) of this section, justifying the need for use of a brand name or equal description.

(d) “Brand name or equal” purchase descriptions shall set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the minimum needs of the Government. For example, when interchangeability of parts is required, such requirement